

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1064 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KURESHI SUBHAN RASULBHAI

Versus

H M PARMAR

Appearance:

MS KUSUM M SHAH for Petitioner

MR ARUN H MEHTA for Respondent No. 1

MR DN PATEL, ADDL PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 24/08/98

ORAL JUDGEMENT

Original complainant has preferred this appeal against the order passed by Judicial Magistrate First Class, Vav on 9.4.1990 in Criminal Case No. 99 of 1990, whereby the learned Judge dismissed the complaint on the grounds that the petitioner has not obtained sanction from the competent authority for prosecuting the accused and that the complainant was not present when the matter

was called out.

2. Briefly stated, the facts leading to the filing of the present appeal are as under:-

2.1 On the date of the incident, which is not mentioned in the complaint, the complainant was returning in a jeep from village Dhima after offering prayers; At about 9.00 a.m., on Dhima-Vav road where there is a temple, a jeep of the police department was seen. The complainant and others, who were travelling in the jeep were stopped; Police personnel asked as to whom the jeep belongs to. It appears that thereafter the complainant was questioned as to whether he is running the vehicle on hire basis or not. On becoming angry, it is alleged that the accused delivered fist blows and the complainant was rescued by the owner of the jeep. Police Station Officer refused to record the complaint because it is alleged that the complaint was against the PSI, and, therefore, a complaint was lodged before the Court. It appears that the complaint was filed on 12.3.90, i.e. on the day of the incident.

2.2 It appears that the accused submitted an application on 23.3.90 contending interlia that on the date of the incident, he was discharging his duties and the complainant was found running a vehicle with passengers without lawful authority and the present complaint is nothing but an offshoot of the action taken by him against the complainant for unauthorised plying of a vehicle.

2.3 The case came up before the learned Magistrate on 9.4.90. The learned Magistrate came to the conclusion that the complaint is required to be dismissed as the complainant has not obtained sanction to prosecute the accused, who is a police personnel. Learned Magistrate further observed that the complainant was not present when the matter was called out, and, therefore also, the complaint is required to be dismissed. Thus, on these grounds, the learned Magistrate dismissed the complaint.

3. The short-cut adopted by the learned Magistrate is required to be deprecated; He ought to have given sufficient opportunity to the complainant.

4. The incident in question is alleged to have taken place on 12.3.1990, as it emerges from the application given by the accused. Without entering into the merits of the case, Mr. A.H. Mehta, learned advocate appearing for the accused, submitted that this Court need not waste

its valuable time on such petty matters, and without prejudice to the rights of the accused, on behalf of the accused, he is sorry for whatever has happened on the date of the incident. It appears that prosecution was launched against the complainant for driving a vehicle without lawful permit. Mr. Mehta submitted that that the present complaint is an outcome of some altercation between the parties, which is required to be deprecated, but the police personnel, the accused, need not face the trial now for the alleged offence. Ms. Shah, learned advocate appearing for the original complainant-appellant is satisfied with the sorrow expressed by Mr. Mehta on behalf of the accused. However, it is clarified that the apology will not be used against the respondent-original accused in any proceedings.

5. In view of what is recorded above, this appeal is not required to be prosecuted any further, and the appeal stands disposed of accordingly.

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